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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,365	08/14/2006	Eros Bettini	4284-0109PUS1	6012
2292 7590 12/03/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER WEINSTEIN, STEVEN L.				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/03/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/589,365

Applicant(s)

BETTINI ET AL.

Examiner

Steven L. Weinstein

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date 8/14/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as being based on a non-enabling disclosure. It is not understood what is the structure that is necessary to impart the disclosed function of eliminating the base. All that is recited in the claim is that the base can be completely eliminated by applying pressure on one side of the closing element so as to create an aperture. This is not understood, nor is there any additional guidance from the specification. For example, what is the nature of the aperture – is it a hole in the closure element itself, or is it the opening defined by the container after the closure element has been removed? Also, how and where does one put pressure on the closing element? What does putting pressure on one side of the closing element mean? Does it mean on one side/surface vs. the opposing side/surface or does it mean on the same side versus another point on the same side? Clarification and/or correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Valyi (3,902,617).

In regard to claim 6, Valyi discloses a container (#50) capable of use with a liquid (e.g., a beverage) comprising a hollow body provided with an upper closing element (e.g., scored, closed mouth area around #54) near the neck, an open lower base and a closing element (e.g., #60) capable of closing the base after filling (Valyi discloses bottom filling) and wherein two or more containers are capable of being stacked (actually, the more accurate term is nested) prior to filling and attachment of the base, and wherein the base can be completely eliminated (the base is removable, e.g., col. 5, para. 3). This is all that claim 6 positively recites. In regard to claim 8, Valyi discloses the body is in the form of a truncated cone in which the sidewalls are arranged slightly tapering (in the absence of any clarification in applicants specification, Valyi is considered to show slight tapering) towards the top, which, of course, inherently facilitates stacking (actually nesting). In regard to claim 9, Valyi discloses that the upper part of the container, at the level of the neck, is provided with a flat part comprising a pre-punched tab (e.g., the score portions which allow for an opening in the flat part), and wherein the pre-punched tab is protected by a removable cap (e.g. #55). In regard to claim 10, Valyi discloses that the closing element is heat sealed to the base (e.g., col. 6, para. 2).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi ('617).

As noted above, it is not clear what structure is intended in claim 7. Valyi appears to be silent as to how, specifically, the closure element is removed from the container. In any case, since Valyi discloses that the bottom, disc-like closure is removable (and separately attached) and can be mechanically attached or attached by heat sealing, it would have been obvious to provide a closure that is detachable by applying pressure on one side of the closure element since this is a notoriously conventional technique to remove lids. That is, lids, for the most part, are conventionally removable by either pulling the lid away from the container (thus applying pressure to one side of the lid) or by unscrewing the lid, if it has screw threads.

Claims 6,8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Fox (1,967,930).

In regard to claim 1, Fox discloses a container (#1) capable of use with a liquid (e.g., milk) comprising a hollow body provided with an upper closing element (e.g., #4) near the neck, an open lower base and a closing element (e.g., #28) capable of closing the base after filling (the container of Fox would be capable of bottom filling) and wherein two or more containers are capable of being stacked (actually, the more accurate term is nested, see fig. 7) prior to filling and attachment of the base, and wherein the base would be capable of being eliminated (the base is removable, since it can be stapled, for example). This is all that claim 6 positively recites. In regard to claim 8, Fox discloses the body is in the form of a truncated cone or a prism in which the sidewalls are arranged slightly tapering (in the absence of any clarification in applicants specification, Fox is considered to show slight tapering) towards the top, which, of

course, inherently facilitates stacking (actually nesting). In regard to claim 9, Fox discloses that the upper part of the container, at the level of the neck, is provided with a flat part comprising a pre-punched tab (e.g., #4' which allow for an opening in the flat part), and wherein the pre-punched tab is protected by a removable cap (e.g. #26).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fox ('617) in view of Valyi ('617), Evans (1,660,606), Kitazawa et al (JP8-187272) and Buck (DE2405637).

As noted above, it is not clear what structure is intended in claim 7. Fox appears to be silent as to the closure element being removed from the container, but does disclose attachment means which would allow one to remove the closure element such as staples. In any case, as evidenced by Valyi ('617), Evans ('606), Kitazawa et al ('272) and Buck ('637), it was well established in the art to provide a bottom, disc-like closure that is removable (and separately attached) and can be mechanically attached or attached by heat sealing. It would also have been obvious to provide a closure that is detachable by applying pressure on one side of the closure element since this is a notoriously conventional technique to remove lids. That is, lids, for the most part, are conventionally removable by either pulling the lid away from the container (thus applying pressure to one side of the lid) or by unscrewing the lid, if it has screw threads. To modify Fox and provide a removable bottom closure would have been an obvious matter of choice and/or design.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fox ('930) in view of Valyi ('617), Namba et al (4,527,699), and Buck (DE2405637).

In regard to claim 10, Fox discloses stapling or gluing the closing element to the base, but appears to be silent as to the use of a heat seal to secure the closing element to the base. In any case, Valyi, Namba et al and Buck discloses it was notoriously conventional in the art to secure end or closure members to a container by employing a heat seal. To modify Fox and substitute one conventional sealing expedient for another conventional sealing expedient would therefore have been obvious.

The remainder of the references cited on the PTO892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794